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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,733	08/15/2001	Charles W. Monagle		3832

7590 03/03/2004

Mr. Richard B. Taylor
Solae, LLC
P.O. Box 88940
St. Louis, MO 63188

EXAMINER

WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/930,733	Applicant(s) MONAGLE, CHARLES W.	
	Examiner Anthony Weier	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 12-37,39 and 40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11,38 and 41 is/are rejected.
- 7) ☒ Claim(s) 2-7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group 1 in the paper filed 11/5/03 is acknowledged.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 8-11, 38, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crank et al (U.S. Patent No. 5858449) taken together with Kerr et al.

Crank et al discloses a soy protein product having a protein content greater than 60% of total dry matter; total dietary fiber content less than 4% of total dry matter; sucrose content greater than 10% of total dry matter; stachyose content less than 1.5% of total dry matter (e.g. 0.4 %); a raffinose content of, for example, 0.2%; a total isoflavone content greater than 2500 micrograms/gram of total dry matter; and a total sulfur containing amino acid content greater than 2.2% of total amino acid content.

Crank et al further discloses employing said soy protein product in a variety of foods including cheese spread and infant formula(see Claim 1 and Table 7).

Crank is silent regarding the galactinol content of the protein product produced therein. Kerr et al teaches preparation of soy protein products having a high protein

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content (greater than 65%) from a soybean that contains no or essentially no galactinol (see claim 32). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed the particular soybean of Kerr et al in the process of Crank to reduce or remove the galactinol in the protein product for the reasoning set forth by Kerr et al.

The claims further call for the presence of less than 2% crude fiber of total dry matter. Crank et al discloses the presence of less than 4%, and it would have been further obvious to one having ordinary skill in the art to have optimized the processing to attain a fiber content within that range, e.g. less than 2%, and to have achieved same as a matter of preference as to the fiber content desired in the final product.

3. Claims 2-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not disclose or teach a soybean protein product containing all of the attributes of claim 1 and wherein said product is not from low oligosaccharide soybeans. Kerr et al teaches providing a soybean material that is low in galactinol, but at the expense of using a low oligosaccharide soybean. Crank et al teaches away from the product having a sucrose content less than 10% and is silent regarding the amount of monosaccharide contained therein (although it is indicated as being far less than 1% due to the data set forth in the Tables and inherently teaches away from the presence of amounts as called for in the instant claims, i.e. 2-3%).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
Primary Examiner
Art Unit 1761

Anthony Weier
February 20, 2004


2/20/04